

20701

Ruppert  
PL-II

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-220006 **DATE:** December 12, 1985  
**MATTER OF:** Ralph Construction, Inc.  
**DIGEST:**

1. Late bid sent by certified mail 4 days before opening may not be considered for award where there is no indication that government mishandling was the paramount cause of the lateness. The fact that the protester may have delayed submission of the bid while awaiting a return telephone call from the contracting agency concerning bid opening time does not constitute mishandling or provide a basis for consideration of the late bid.
2. When agency receives six bids and the apparent low bid is less than the previous contract price for the same services, there is no reason to question the contracting officer's determination that reasonable prices have been obtained or to consider a late bid that is lower than the lowest timely bid.

Ralph Construction, Inc., protests the rejection of its bid as late under invitation for bids (IFB) No. F65503-85-B-0035. The solicitation, issued July 22, 1985, by the Department of the Air Force, is for the maintenance of family housing at Eielson Air Force Base, Alaska. Bids were requested for the basic period from October 1, 1985, to September 30, 1986, plus two 1-year options.

We deny the protest.

The Air Force amended the IFB three times. Amendment 002, issued on August 8, changed the specifications and erroneously indicated that the time and date for receipt of bids, originally scheduled for 10 a.m. on August 21, had been extended; however, no new time or date was specified in the amendment. Upon realizing the error, on August 12 the

033998

contracting officer issued amendment 003, which indicated that bid opening would remain at 10 a.m. on August 21.

On August 16, the protester states, its representative called the contracting office to ascertain the correct bid opening time. The Air Force reports that most of its personnel were at a squadron picnic and the individual who took the call was unaware of the status of the procurement and, therefore, unable to answer the question raised by Ralph. She apparently took a message, but the contract buyer never received it.

The Air Force states that amendment 003 was mailed to all prospective bidders, including Ralph. Ralph, however, contends that it did not receive this amendment until August 24, i.e., after bid opening. The firm argues that the agency's failure to return its initial or subsequent telephone calls, also made on August 16, caused its bid to be late. Alternatively, Ralph contends that government mishandling accounts for the lateness of the bid, which was postmarked August 17, but not received by the contracting officer until 1:25 p.m. on August 21. Ralph seeks consideration of its bid or preparation costs and attorney's fees.

The Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.304-1 (1984), permits consideration of a bid received at the office designated in the solicitation after bid opening if it is received before award is made and it (1) was sent by registered or certified mail not later than the 5th calendar day before the date specified for receipt of bids or (2) was sent by mail and it is determined by the government that the late receipt was due solely to mishandling by the government after receipt at the government installation. Since, as indicated above, the postmark on Ralph's certified mail receipt is August 17, the bid cannot be considered under the 5-day rule.

As for mishandling after receipt at the government installation, according to the Air Force, the general procedure is for Eielson employees to pick up mail at the U.S. Postal Service facility located on the base and deliver it to a central point, where it is sorted and distributed. For certified mail, the employees note the time it is actually picked up. Here, the record indicates that Ralph's bid was picked up at 12:10 p.m. on the day of bid opening.

Generally, a protester must establish the timely receipt of a bid or modification at the government installation before we will consider alleged mishandling. X- Tyal International Corp., B-202434, Jan. 7, 1982, 82-1 CPD ¶ 19. In the absence of the type of evidence of timely receipt that is acceptable under the late bid clause, i.e., the time/date stamp on the bid wrapper or other documentary evidence of receipt maintained by the installation, the question of government mishandling is irrelevant. Allied Electric, Inc., B-216548, Mar. 12, 1985, 85-1 CPD ¶ 304; Eliscu & Co., Inc., B-211617, Jan. 17, 1984, 84-1 CPD 75.

Ralph argues that an exception to the above rule should be made in view of the unreturned telephone calls. The agency, while acknowledging that at least one call was not returned, states that it has no record of subsequent calls from Ralph and suggests that the protester failed diligently to pursue the matter, thereby contributing to the lateness of its bid.

In our opinion, Ralph cannot argue that its bid was mishandled by the government, in that the telephone call or calls occurred before the bid was even mailed. We are also of the opinion that Ralph should have made additional attempts to obtain clarification as to the time and date of bid opening and/or acted on the assumption that bids remained due at 10 a.m. on August 21. The fact that Ralph delayed submission of the bid while awaiting oral advice from the agency does not constitute mishandling or provide a basis for its consideration.

Regardless of whether Ralph timely received the amendment that indicated that bid opening had not been extended, it was faced with a discrepancy between the originally scheduled opening time and an amendment which indicated that the bid opening had been extended, but did not contain a new time or date. In such a case, Ralph could not reasonably have assumed that bid opening had been extended until some indefinite time in the future. See Avantek, Inc., 55 Comp. Gen. 735 (1976), 76-1 CPD ¶ 75.

Regarding Ralph's contention that its unopened bid for a 3-year period (a base year plus two 1-year options) should be considered because it is approximately \$500,000 less than the apparent low bid, our Office has held that a late bid cannot be considered on the basis that it may offer the

government certain advantages over those which have been timely received. See Jack Burney, B-218426, Apr. 24, 1985, 85-1 CPD ¶ 468.

Ralph also argues that since its unopened bid was lower than the lowest timely bid, reasonable prices were not obtained. The record discloses that the Air Force received six bids and that the apparent low bid is less than the previous contract price for the same services. This suggests that reasonable prices were obtained. A determination of price reasonableness properly may be based upon comparisons with such things as a government estimate, past procurement history, current market conditions, or any other relevant factors. Omega Container, Inc., B-206858.2, Nov. 26, 1982, 82-2 CPD ¶ 475. We find no basis to question the contracting officer's determination in this regard, and we conclude that the agency properly refused to consider Ralph's bid.

The protest is denied.

*for Seymour Efron*  
Harry R. Van Cleve  
General Counsel